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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>HB352</u>	<b>Sponsor</b>	<u>Stapleton/Nibert/Trujillo, C./Alcon/Herrera</u>
<b>Tracking Number</b>	<u>.212534.1</u>	<b>Committee Referrals</b>	<u>HEC/HJC/HAFC</u>
<b>Short Title</b>	<u>Create Crime of Hazing</u>		
<b>Analyst</b>	<u>Terrazas</u>	<b>Original Date</b>	<u>1/30/19</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

House Bill 352 (HB352) proposes to enact a new section of the Criminal Code to create a new misdemeanor of “hazing.” The bill notes hazing occurs when a student enrolled in a public or private postsecondary educational institution willfully takes an action or creates a situation that recklessly or intentionally endangers the mental or physical health of another current or prospective student for the purpose of induction, initiation, admission, or maintenance of membership in a student organization, student body, or private athletic club. Further, hazing occurs whether or not the organization, body, or club is sanctioned by the educational institution. Hazing does not include coaching, training, conditioning, physical education, or customary athletic or school-sanctioned events. A person who commits hazing would be guilty of a misdemeanor and be sentenced to a definite term in county jail of less than one year, the payment of a \$1,000 fine, or both.

**FISCAL IMPACT**

The bill does not contain an appropriation.

The Administrative Office of the Courts (AOC) indicates the bill would create a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Other fiscal impacts would be proportional to the enforcement of the law.

The Law Offices of the Public Defender (LOPD) indicates that because hazing implicates the type of group activity that would likely lead to multiple individuals being arrested, there would be a need for conflict counsel and likely result in expenditures for contract attorneys outside of LOPD’s ordinary workforce to ensure each codefendant receives conflict-free representation. Further, if more high-penalty trials result, LOPD and district attorneys would need to hire more trial attorneys with greater experience, which would also require more investigators, experts, and court resources. An LOPD assistant trial attorney’s mid-point salary including benefits is \$102,187 in Albuquerque and Santa Fe and \$109,362 in the outlying areas. Recurring statewide operational costs per attorney

would be \$2,300 with start-up costs of \$3,128. Additionally, average support staff costs per attorney would total \$77,113.

## **SUBSTANTIVE ISSUES**

All but six states – New Mexico, Alaska, Montana, Hawaii, Wyoming, and South Dakota – have enacted laws to address hazing. Penalties in states with anti-hazing laws range from no criminal sanctions, to low fines with some jail time, to large fines and prison sentences for felony-level hazing.

While there are no official statistics or a central database that records hazing-related mental or physical harm, claims of hazing-related incidents, or hazing-related deaths nationwide, research shows at least one person has died each year from a hazing-related incident since 1959 in the United States and Canada.

## **ADMINISTRATIVE IMPLICATIONS**

AOC indicates the bill would require a statewide update, distribution, and documentation of statutory changes.

## **TECHNICAL ISSUES**

The bill notes hazing occurs when a student creates a situation that recklessly or intentionally endangers the health of another student. A “situation” is incapable of forming *mens rea*. The sponsor may wish to consider amending the bill so that it is the student who recklessly or intentionally creates a situation that endangers another student, putting the *mens rea* element of the offense back on the student, rather than the situation.

AOC notes the public, including defendants and juries, and legal professionals, such as law enforcement, prosecutors and defense attorneys, and judges, may find the definition of hazing too complex to determine exactly what conduct is prohibited, and exactly how a person’s conduct may violate the statute.

The New Mexico Attorney General (AG) indicates that without clear definitions for the terms and limitations of “mental or physical health,” a hazing crime may be found unconstitutionally void, which arguably allows subjective and *ad hoc* application and does not provide individuals of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited.

## **SOURCES OF INFORMATION**

- LESC Files
- Administrative Office of the Courts (AOC)
- New Mexico Attorney General (AG)
- Law Offices of the Public Defender (LOPD)

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